

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NIELDA BARKER

Plaintiff,

- against -

THE CITY OF NEW YORK, THE CITY OF NEW
YORK POLICE DEPARTMENT, and EMMANUEL
GONZALEZ, individually, and CYNTHIA
LAGARES, individually, and BEKIM BECAJ,
individually,

Defendants.
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DEARIE, District Judge:

MEMORANDUM & ORDER

1:19-cv-00096-RJD-RER

Plaintiff Nielda Barker (“Plaintiff”) brings employment discrimination and retaliation claims against the City of New York, the City of New York Police Department (“NYPD”), NYPD Deputy Inspector Emmanuel Gonzalez, NYPD Lieutenant Cynthia Lagares, and NYPD Sergeant Bekim Becaj (collectively, “Defendants”). Specifically, Plaintiff claims that Defendants discriminated against her on the basis of gender, age, and disability, created a hostile work environment, and retaliated against Plaintiff in violation of the Family Medical Leave Act (“FMLA”), the Age Discrimination in Employment Act (“ADEA”), Title VII of the Civil Rights Act (“Title VII”), the Americans with Disabilities Act (“ADA”), New York State Executive Law (“NYSHRL”), and the New York City Administrative Code (“NYCHRL”). Defendants move to dismiss the claims of gender, age, and disability discrimination, hostile work environment, and FMLA interference and retaliation. Plaintiff cross-moves to amend the complaint. The Court assumes the parties’ familiarity with the underlying facts, procedural posture, and legal issues.

As discussed at some length with counsel during the oral argument held on November 26, 2019, this Court grants Defendants’ Motion to Dismiss Plaintiff’s claims of age and gender


discrimination under the ADEA, Title VII, NYSHRL, and NYCHRL, including claims of intentional discrimination and hostile work environment based on age and gender. Plaintiff's age and gender discrimination claims are unsupported by the pleadings. The Court denies Defendants' Motion to Dismiss as to Plaintiff's disability discrimination and FMLA claims. The Court notes, however, its strong reservations with respect to Plaintiff's FMLA claims and understands that Plaintiff's counsel will continue to evaluate the viability of such claims as discovery proceeds, and take appropriate action should the circumstances so warrant.

Plaintiff's cross-motion to amend Plaintiff's complaint with the Proposed Second Amended Complaint, ECF No. 24, Ex. A, is granted.

In light of the foregoing, Defendants' Partial Motion to Dismiss is granted in part and denied in part. Plaintiff's cross-motion to amend the complaint is granted.

SO ORDERED.

Dated: Brooklyn, New York
November 26, 2019


S/Raymond J. Dearie
RAYMOND J. DEARIE
United States District Judge